IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2005

CORAM

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.A.Nos.1797, 1798, 1846 & 1847 of 2004

W.A.Nos.1797 & 1798 of 2004:

The President Kandipedu Panchayat Katpadi Panchayat Union Vellore District	..	Appellant in W.A.No.1797 of 2004/ 2nd Respondent in WP 526/04
M.Govindan The President Vandranthangal Village Panchayat Katpadi Panchayat Union Katpadi Taluk Vellore District	..	Appellant in W.A.No.1798 of 2004/ 2nd Respondent in WP 38846/03

-Vs-

M.Kothanda Reddy	..	1st respondent in W.A.No.1797 of 2004/ Petitioner in WP 526/04
M.Pankajam	..	1st respondent in W.A.No.1798 of 2004/ Petitioner WP 38846/03
The District Collector (Inspector of Panchayat) Vellore District, Vellore	..	2nd respondent in both the W.As. 1797, 1798/04 (Ist Respondent in both WPs)
The Government of Tamil Nadu rep. by its Secretary to Government Rural Development Department Fort St.George Chennai 600 009 (3rd respondent impleaded as per order dated 01.02.2005 in W.A.M.P.Nos.201 & 260 of 2005 by Hon'ble CJ & DMJ)	..	3rd respondent in both the W.As.

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W.A.Nos.1797 & 1798 of 2004 are filed under Clause 15 of the Letters Patent, against the common order of the learned single Judge dated 17.4.2004 made in W.P.Nos.526 of 2004 and 38846 of 2003.

For Appellants :: Mr.P.S.Raman
Senior Counsel for
M/s V.Suthakar &
K.S.Viswanathan

For Respondents :: Mr.K.Muthukumarasamy
for R1 in both W.As.

Mr.V.Raghupathy
Government Pleader for
R2 & R3 in both W.As.

W.A.Nos.1846 & 1847 of 2004:

S.Senthilkumar
President
Siraghizhandanallur Panchayat
Kumaratchi Panchayat Union
Cuddalore District .. Appellant in (4th Respondent in WP 7810/03) W.A.No.1846 of 2004 & 4th respondent in W.A.No.1847 of 2004

The Block Development Officer
Commissioner, Panchayat Union
Kumaratchi, Kattumannar Koil Taluk .. Appellant in W.A.No.1847 of 2004 & 4th respondent in W.A.No.1846 of 2004 (3rd Respondent in WP 7810/03)

-Vs-

1. T.Kumaravelu .. 1st respondent in (Petitioner in WP 7810/03) both the W.As.

2. The Chief Executive Officer
Collector of Cuddalore District
Cuddalore .. 2nd respondent in(Ist Respondent in WP 7810/03) both the W.As.

3. The Assistant Director of Panchayat
Cuddalore .. 3rd respondent in (R2 in WP 7810/03) both the W.As.

4. R.Kumar .. 5th respondent in (5th Repondent WP 7810/03) both the W.As.

W.A.Nos.1846 & 1847 of 2004 are filed under Clause 15 of the Letters Patent, against the order of the learned single Judge dated 5.3.2004 made in W.P.No.7810 of 2003.

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For Appellants :: Mr.V.Subbarayan

For Respondents :: Mr.V.Raghupathy
Government Pleader for
R2 & R3 in both W.As.

JUDGMENT

D.MURUGESAN, J.

The above writ appeals raise a common question as to whether, if the President or the Vice President of a Panchayat refuses to sign a cheque, should it be treated as "absence" within the meaning of the word employed in Section 188(3) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as "the Act").

2. We have heard the learned counsel for the appellants and the respondents.

3. The scope of Section 188(3) of the Act came up for consideration before a Division Bench in W.A.No.1799 of 2004. By an order dated 28.1.2005, the Division Bench has held as follows:-

> "In our opinion, we can give a wider meaning to the word "absence" than mere "physical absence". One word can have several meanings, just as several words can have one meaning (synonyms). It all depends on the context in which it has been used. For example, the word "desertion" appearing in Section 13 of the Hindu Marriage Act implies not only factum of separation, but also "animus deserendi", vide Lachman v. Meena (AIR 1964 SC 40). There can be constructive desertion. The husband and wife may be living together under the same roof, but the husband may have legally deserted her (wife) by his conduct. Similarly the word "absence" is a word of wide connotation, and is not necessarily limited to "physical absence". The indifferent or obstructionist attitude of a person or avoidance can, in our opinion, amount to absence in some situations.
>
> In our opinion, if the Vice President (or President, as the case may be) by his conduct makes it impossible for the village panchayat to function (either by neglecting his duties or by causing regular obstruction in the administration or otherwise) he may be said to be "absent". Such interpretation of the word "absence" in Section 188 (3) would be taking a practical view otherwise the Vice President (or President, as the case may be) if he has adversarial relationship with the Vice President (or President as the case may be) can make it very difficult for the Village Panchayat to function by his simple act of refusing to sign

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cheques. Funds are often required for various purposes and if the President or Vice President refuses to sign cheques for ulterior motives, as is the allegation in the counter affidavit in this case, the functioning of the village panchayat may become impossible. We are not expressing any opinion as to whether in this case, the Vice President has refused to sign for some ulterior motives, but we are certainly of the opinion that Section 188(3) of the Act, as well as G.O.Ms.No.92 dated 26.03.1997 can be read harmoniously in the manner mentioned above. We do not agree with the learned single Judge that if the Vice President (or President, as the case may be) refuses to sign it can never be a case of "absence" within the meaning of the word in Section 188(3) of the Act, and the only recourse which can be taken to is under Section 206. It may be noted that Section 206(2) of the Act states that before removing the Vice President the procedure mentioned in sub-sections (2) to (13) of Section 205 has to be complied with, and that procedure is a cumbersome, time consuming one. Surely for signing every cheque it would be impracticable to resort to that procedure. If the conclusion of the learned single Judge that for refusal to sign cheques action could be taken under Section 206(3) of the Act for removal of the Vice President (or President, as the case may be) the time bound programmes like Village Panchayat, earmarked grant account like Sampoorna Grame Yojgas Yojana Scheme (Food for work), Village Panchayat Scheme Fund Account etc., will lapse if the funds are not utilized within the time stipulated, since the procedure mentioned in sub-sections (2) to (13) of Section 205 is very elaborate and cumbersome."

4. The Division Bench has held that if the Vice President (or President, as the case may be) by his conduct makes it impossible for the village panchayat to function (either by neglecting his duties or by causing regular obstruction in the administration or otherwise) he may be said to be "absent" and that such interpretation of the word "absence" in Section 188(3) would be taking a practical view, otherwise the Vice President (or President, as the case may be) if he has adversarial relationship with the Vice President (or President as the case may be) can make it very difficult for the Village Panchayat to function by his simple act of refusing to sign cheques. Funds are often required for various purposes and if the President or Vice President refuses to sign cheques for ulterior motives, as is the allegation in the counter affidavit in this case, the functioning of the village panchayat may become impossible. The Division Bench has also held that Section 188(3) of the Act, as well as G.O.Ms.No.92 dated 26.03.1997 can be read harmoniously and that if the Vice President (or President, as the case may be) refuses to sign, resorting to action under Section 206 of the Act may require the compliance of the procedure mentioned in sub-sections (2) to (13) of Section 205 and the said procedure is a cumbersome, time

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consuming one, as for signing every cheque it would be impracticable to resort to that procedure.

5. The Division Bench has further held in regard to the duty of the Inspector of Panchayats namely, the District Collector before granting prior approval to any resolution passed by the Panchayat in authorizing another member of the Village Panchayat to sign the cheque, in the place of the Vice President, along with the President as follows:-

> "We would however point out that before granting prior approval it would be the duty of the Inspector of Panchayats (District Collector) to give a hearing to the Vice President or (President, as the case may be) (which need not be a personal hearing as already mentioned above), and apply his mind and decide by a written order giving reasons as to whether in his opinion, the Vice President (or President, as the case may be) is refusing to sign the cheque for ulterior motive, or for genuine reasons in the interest of the village panchayat. It will be the duty of the Inspector of Panchayats, to decide this matter objectively and impartially without being influenced by any extraneous pressures or considerations. If the refusal to sign the cheque is for good and genuine reasons in the interest of the Village Panchayat, the Inspector should refuse approval, but if it is for extraneous considerations or is mala fide he should grant it.

6. It is therefore to be considered as to whether the Inspector of Panchayats namely, the District Collector had given opportunity to the first respondent in each appeals before passing the orders impugned in the writ petitions.

7. The first respondent in W.A.No.1797 of 2004 (writ petitioner) was elected as Vice President in the Kandipedu Village Panchayat, Vellore District. By a resolution dated 18.10.2003, the Panchayat resolved to authorize another member to sign the cheque along with the President, as the first respondent was not cooperating with the administration. The said resolution was forwarded to the District Collector cum Inspector of Panchayat, Vellore District who, by an order dated 6.1.2004, approved the resolution of the Panchayat and the power of the Vice President to sign the cheque was cancelled. The first respondent questioned the above order of the Inspector of Panchayat in W.P.No.526 of 2004 and the said writ petition was allowed on 17.4.2004 on the ground that if the Vice President omits or refuses to discharge his duties, the only course open to the Inspector of Panchayats is to invoke the provisions of Section 206 of the Act warranting removal of the Vice President only after issuing notice and giving due opportunity. The President of the Kandipedu Village Panchayat has filed the above writ appeal questioning the impugned judgment.

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8. The first respondent in W.A.No.1797 of 2004, in ground (f) of the affidavit filed in support of the writ petition has specifically averred that the impugned order is in violation of the basic principles of natural justice and no notice was given to him before passing the said order. The District Collector, Vellore has not filed any counter affidavit in the said writ petition. Though he has filed an affidavit in support of the petition to vacate the interim order, neither he has denied the above specific averment of the first respondent nor has stated that the first respondent was given opportunity before passing of the order. In the absence of such notice, as has been held by the Division Bench, the order impugned in the writ petition cannot be sustained.

9. The first respondent in W.A.No.1798 of 2004 (writ petitioner) was elected as Vice President in the Vandaranthangal Village Panchayat, Vellore District. By a resolution dated 17.9.2003, the Panchayat resolved to authorize another member to sign the cheque along with the President, as the first respondent was delaying the signing of cheques. The said resolution was forwarded to the District Collector cum Inspector of Panchayat, Vellore District who, by an order dated 23.12.2003, approved the resolution of the Panchayat and the power of the Vice President to sign the cheque was cancelled. The first respondent questioned the above order of the Inspector of Panchayat in W.P.No.38846 of 2003 and the said writ petition was allowed on 17.4.2004 on the ground that if the Vice President omits or refuses to discharge her duties, the only course open to the Inspector of Panchayats is to invoke the provisions of Section 206 of the Act warranting removal of the Vice President only after issuing notice and giving due opportunity. The President of the Vandaranthangal Village Panchayat has filed the above writ appeal questioning the impugned judgment.

10. The first respondent in W.A.No.1798 of 2004, in ground (e) of the affidavit filed in support of the writ petition has specifically averred that the impugned order is in violation of the basic principles of natural justice and no notice was given to her before passing the impugned order. Though the District Collector, Vellore has filed the counter affidavit in the said writ petition, neither he has denied the above specific averment of the first respondent nor has stated that the first respondent was given opportunity before passing the order. In the absence of such notice, as has been held by the Division Bench, the order impugned in the writ petition cannot be sustained.

11. The first respondent in W.A.Nos.1846 & 1847 of 2004 (writ petitioner) was elected as Vice President in the Siragizhandanallur Village Panchayat, Cuddalore District. By a resolution dated 23.12.2002, the Panchayat resolved to authorize another member to sign the cheque along with the President, as the first respondent was not cooperating with the administration. The said resolution was forwarded to the District Collector cum Inspector of Panchayat, Cuddalore District who, by an order dated 21.1.2003, approved the resolution of the Panchayat and the power of the Vice President to sign the cheque was cancelled. The first respondent questioned the above order of the Inspector of Panchayat in W.P.No.7810 of 2003 and the said writ petition was

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allowed on 5.3.2004 on the ground of non-compliance of the procedures contemplated under Section 206 of the Act. The President of the Siragizhandanallur Village Panchayat and the Block Development Officer, Kumaratchi Panchayat Union, Cuddalore District have filed the above writ appeals questioning the impugned judgment.

12. The first respondent in W.A.Nos.1846 & 1847 of 2004, in paragraph 13 of the affidavit filed in support of the writ petition has specifically averred that no enquiry was conducted by the District Collector, Cuddalore before passing the impugned order. The District Collector, Cuddalore has not filed any counter affidavit denying the above specific allegation of the first respondent. In the absence of such notice, as has been held by the Division Bench, the order impugned in the writ petition cannot be sustained.

13. In view of the above and following the judgment of the Division Bench in W.A.No.1799 of 2004 dated 28.1.2005, the matters are remanded back to the District Collectors of Vellore and Cuddalore to pass fresh orders after giving an opportunity of hearing (which need not be a personal hearing) to the individual Vice President and President of the Panchayat, and others concerned, and after recording reasons as to whether in their opinion, the Vice President (or President, as the case may be) is refusing to sign the cheque for ulterior motive, or for genuine reasons in the interest of the village panchayat. It will be the duty of the Inspector of Panchayats, to decide this matter objectively and impartially without being influenced by any extraneous pressures or considerations. If the refusal to sign the cheque is for good and genuine reasons in the interest of the Village Panchayat, the Inspectors should refuse approval, but if it is for extraneous considerations or is mala fide they should grant it. This should be done very expeditiously by the District Collectors of Vellore and Cuddalore.

14. The writ appeals are disposed of accordingly. No costs. Consequently, W.A.M.P.Nos.3367, 3368, WAVMP Nos.4831, 4840, and WAMP Nos.3451 and 3452 of 2004 are closed.

ss

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   of Tamil Nadu
   Rural Development Department
   Fort St.George
   Chennai 600 009

2. The District Collector cum
   Inspector of Panchayats
   Vellore District

3. The Chief Executive Officer
   Collector of Cuddalore District
   Cuddalore

4. The Assistant Director of Panchayat
   Cuddalore

5. The Block Development Officer
   Commissioner, Panchayat Union
   Kumaratchi Panchayat Union
   Cuddalore District

6. The District Collector,
   Cuddalore

7. The President,
   Kandipedu Panchayat Union,
   Katpadi Taluk,
   Vellore District.

8. The President,
   Vandaranthangal Village
   Panchayat Katpadi Panchayat
   Union, Katpadi Vellore District.

9. The President
   Brammapuram Village Panchayat
   Katpadi Panchayat
   Union, Katpadi Taluk, Vellore District.

10. The President, Sivaghizhandanallur
    Panchayat Kumaratchi Panchayat Union
    Cuddalore District

11. The Section Officer, VR Section,
    High Court, Madras 104.

+ 2 ccs to Mr.V.Subbarayan, Advocate (SR No.3961)
+ 1 cc to Mr.V.Sanjeevi, Advocate (SR No.3886)
+ 2 ccs to Mr.V.Suthakar, Advocate (SR Nos.3855, 3856)
+ 1 cc to The Government Pleader (SR No.4114)

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